

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**THOMAS CRAMER, CHRISTA
SPENCER, MATTHEW MERRILL,
PAUL LORENZ, On Behalf of
Themselves And All Others
Similarly Situated,**

Plaintiffs,

V.

BANK OF AMERICA, N.A., BANK OF AMERICA CORPORATION.

Defendants.

JURY TRIAL DEMANDED

Case No. 1:12-CV-8681

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS AND PETITION TO COMPEL INDIVIDUAL ARBITRATION**

Plaintiffs, on behalf of themselves and all others similarly situated, respectfully submit this brief in opposition to Defendants' Motion to Dismiss and Petition to Compel Individual Arbitration (Doc. 24) and state as follows.

1. This is an action for unpaid wages resulting from Bank of America's and Countrywide's misclassification of mortgage loan origination employees as exempt from the Fair Labor Standards Act's overtime requirements. This Court previously approved a settlement involving identical claims of employees in other mortgage loan origination job positions in *Kelly v. Bank of America, N.A. et al.*, No. 1:10-CV-05332 (N.D. Ill.) ("*Kelly*"). Because the Bank failed to disclose some mortgage loan origination employees in job codes that should have been included in the *Kelly* action and settlement, and thereafter refused to subsequently correct the

error, Plaintiffs were forced to file this action on behalf of the mortgage loan origination employees who worked in job codes which should have been included in the *Kelly* settlement.

2. The Bank filed a Motion to Dismiss and Petition to Compel Individual Arbitration and argued that the current named plaintiffs Thomas Cramer and Christa Spencer signed arbitration agreements, which prevent them from maintaining the action on behalf of themselves and all others similarly situated. Defendants' only argument in support of dismissal is that the Named Plaintiffs lack standing to bring the claims on behalf of the class due to their arbitration agreements.

3. To protect the rights and remedies of those mortgage loan origination employees who did not sign such arbitration agreements and whom the Bank improperly failed to disclose to this Court and Plaintiffs as part of the *Kelly* settlement, Plaintiffs filed a Motion seeking leave to amend their complaint to add two additional named plaintiffs – Matthew Merrill and Paul Lorenz. Mr. Merrill and Mr. Lorenz are two current opt-in plaintiffs who the Bank has indicated do not have arbitration agreements. As explained in that Motion (Doc. 39) and memorandum of law in support (Doc. 40), Plaintiffs respectfully submit that justice requires leave to amend and Defendants will not be prejudiced by the proposed amendment.

4. Plaintiffs also respectfully submit that granting them leave to amend their complaint will allow this action to advance with Mr. Merrill and Mr. Lorenz as representative plaintiffs of the mortgage origination employees who are not bound

by arbitration agreements. Should the Court grant Plaintiffs' motion, Defendants' motion to dismiss and petition to compel individual arbitration is moot as there will be named plaintiffs both with and without arbitration agreements to representative the putative class. For this reason, Defendants' motion should be denied.

5. Plaintiffs Cramer and Spencer consent to stay their claims as well as those of the opt-in plaintiffs who signed Countrywide arbitration agreements and will file demands for arbitration.

Accordingly, Plaintiffs respectfully request that the Court deny Defendants' motion to dismiss and petition to compel individual arbitration. Plaintiffs further respectfully request all other relief that the Court deems just and proper.

Dated: March 1, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via the Court's CM/ECF filing system on March 1, 2013 upon the following:

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